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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

* * *

Wendell Dwayne O’Neal,

Plaintiff,

v.

Zurich Insurance Company Inc., et al.,

Defendants.

Case No. 2:18-cv-01677-RFB-BNW

Order re [16]

O’Neal initiated this matter with an application to proceed in forma pauperis (“IFP”) and accompanying complaint. ECF No. 1. The Court granted IFP status to O’Neal, screened his complaint, and recommended that it be dismissed with leave to amend. ECF No. 7. Since that time, O’Neal has twice amended his complaint. ECF Nos. 12 and 15. In his latest complaint, O’Neal accuses the 11 defendants of agreeing to deny O’Neal’s civil rights to “sue, give evidence, and [] the full and equal benefit of all laws.” ECF No. 15 at 6.

O’Neal filed his motion for service of process at ECF No. 16. The Court has thus far deferred ruling on the motion because it intended to screen the operative complaint for cognizable claims. *See* 28 U.S.C. § 1915(e)(2) (explaining that when a litigant proceeds IFP, the court “shall dismiss the case at any time if the court determines that . . . the action . . . is frivolous or malicious”). The Court ordinarily screens indigent plaintiffs’ complaints **prior to service**. *See Cono v. Loiacono*, 2018 WL 9848280, at *2 (D. Nev. Oct. 18, 2018) (citing *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc)).

The purpose of the screening procedure is “to ensure that the targets of frivolous or malicious suits need not bear the expense of responding.” *Cf. Nordstrom v. Ryan*, 762 F.3d 903, 907 n.1 (9th Cir. 2014) (construing § 1915A, which is the provision of the IFP statute applicable to incarcerated litigants) (citing *Wheeler v. Wexford Health Sources, Inc.*, 689 F.3d 680, 681 (7th Cir. 2012)); *see also Williams v. White*, 897 F.3d 942, 943–44 (8th Cir. 1990) (“Dismissals under

1 section 1915 are to be made . . . before burdening a defendant with the necessity of making a
2 responsive answer under the rules of civil procedure.”) Now, however, all the named defendants
3 have appeared and filed a motion to dismiss, which remains pending before the district judge.
4 ECF No. 22. As a result, the Court declines to screen plaintiff’s complaint because defendants’
5 appearance and motion obviate the purpose of the screening procedure. *See Olausen v. Murguia*,
6 No. 3:13-CV-00388-MMD, 2014 WL 6065622, at *3 (D. Nev. Nov. 12, 2014) (“[T]he screening
7 provision does not require a court, either explicitly or implicitly, to screen every time a plaintiff
8 seeks to amend the complaint.”).

9 That said, O’Neal retains his IFP status. When a party proceeds IFP, the Court “shall
10 issue and serve all process, and perform all duties in such cases.” 28 U.S.C. § 1915(d); Fed. R.
11 Civ. P. 4(c)(3) (explaining that upon an IFP plaintiff’s request, the Court “must” “order that
12 service be made by a United States marshal . . . or by a person specially appointed by the court.”);
13 *Puett v. Blandford*, 912 F.2d 270, 273 (9th Cir. 1990) (“a party proceeding in forma pauperis is
14 entitled to have the summons and complaint served by the U.S. Marshal.”). Still, an IFP plaintiff
15 who invokes the Court’s aid in issuing and serving all process ordinarily “must provide sufficient
16 identifying information, including a full name and a current address for the unserved defendants,
17 so they can be served.” *Thomas v. Ellis*, 2014 WL 116286, at *6 (N.D. Cal. Jan. 13, 2014).
18 Failure to do so can result in a dismissal for lack of service. *Id.* (citing *Walker v. Sumner*, 14 F.3d
19 1415, 1422 (9th Cir. 1994)).

20 Here, O’Neal moved the Court to effect service of process upon the defendants and the
21 Court will grant the motion because he proceeds IFP. However, O’Neal provided addresses for
22 some but not all of the defendants. Further, O’Neal provided these addresses over two years ago
23 when this case was in the pre-screening stage. Therefore, the Court will require O’Neal to fill out
24 a USM-285 form for each defendant and return those forms to the Clerk of Court. The Clerk of
25 Court will then use those forms to issues summonses for defendants, and the U.S. Marshal can
26 then attempt service.

27 ...

28 ...

Conclusion

IT IS THEREFORE ORDERED that plaintiff's motion (ECF No. 16) is GRANTED.

IT IS FURTHER ORDERED that the Clerk of Court is directed to send plaintiff 15 copies of form USM-285.

IT IS FURTHER ORDERED that plaintiff must complete the USM-285 forms and return them to the Clerk of Court within 20 days from this order.

IT IS FURTHER ORDERED that upon receipt of the completed USM-285 forms the Clerk of Court is directed to issue summonses for each defendant.

IT IS FURTHER ORDERED that the Clerk of Court is directed to serve upon the U.S. Marshal a copy of this order, plaintiff's completed USM-285 forms, the issued summonses, and the third amended complaint (ECF No. 15).

IT IS FURTHER ORDERED that upon receipt of the documents from the Clerk of Court, the U.S. Marshal is directed, in accordance with Federal Rule of Civil Procedure 4(c)(3), to attempt to serve each defendant with the complaint and that defendant's respective summons.

DATED: December 4, 2020.



BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE

U.S. Department of Justice
United States Marshals Service

PROCESS RECEIPT AND RETURNSee "Instructions for Service of Process by U.S. Marshal"

PLAINTIFF	COURT CASE NUMBER
DEFENDANT	TYPE OF PROCESS

SERVE AT { NAME OF INDIVIDUAL, COMPANY, CORPORATION, ETC. TO SERVE OR DESCRIPTION OF PROPERTY TO SEIZE OR CONDEMN
ADDRESS (Street or RFD, Apartment No., City, State and ZIP Code)

SEND NOTICE OF SERVICE COPY TO REQUESTER AT NAME AND ADDRESS BELOW	Number of process to be served with this Form 285	
	Number of parties to be served in this case	
	Check for service on U.S.A.	

SPECIAL INSTRUCTIONS OR OTHER INFORMATION THAT WILL ASSIST IN EXPEDITING SERVICE (Include Business and Alternate Addresses, All Telephone Numbers, and Estimated Times Available for Service):

Fold

Fold

Signature of Attorney other Originator requesting service on behalf of:	<input checked="" type="checkbox"/> PLAINTIFF <input type="checkbox"/> DEFENDANT	TELEPHONE NUMBER	DATE
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SPACE BELOW FOR USE OF U.S. MARSHAL ONLY-- DO NOT WRITE BELOW THIS LINE

I acknowledge receipt for the total number of process indicated. (Sign only for USM 285 if more than one USM 285 is submitted)	Total Process _____	District of Origin No. _____	District to Serve No. _____	Signature of Authorized USMS Deputy or Clerk _____	Date _____
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I hereby certify and return that I ☐ have personally served, ☐ have legal evidence of service, ☐ have executed as shown in "Remarks", the process described on the individual, company, corporation, etc., at the address shown above on the on the individual, company, corporation, etc. shown at the address inserted below.

☐ I hereby certify and return that I am unable to locate the individual, company, corporation, etc. named above (See remarks below)

Name and title of individual served (if not shown above)	<input type="checkbox"/> A person of suitable age and discretion then residing in defendant's usual place of abode				
Address (complete only different than shown above)	<table border="1"> <tr> <td>Date</td> <td>Time <input type="checkbox"/> am <input type="checkbox"/> pm</td> </tr> <tr> <td colspan="2">Signature of U.S. Marshal or Deputy _____</td> </tr> </table>	Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm	Signature of U.S. Marshal or Deputy _____	
Date	Time <input type="checkbox"/> am <input type="checkbox"/> pm				
Signature of U.S. Marshal or Deputy _____					

Service Fee	Total Mileage Charges including endeavors)	Forwarding Fee	Total Charges	Advance Deposits	Amount owed to U.S. Marshal* or (Amount of Refund*) \$0.00
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REMARKS:

PRINT 5 COPIES:

1. CLERK OF THE COURT
2. USMS RECORD
3. NOTICE OF SERVICE
4. BILLING STATEMENT*: To be returned to the U.S. Marshal with payment, if any amount is owed. Please remit promptly payable to U.S. Marshal.
5. ACKNOWLEDGMENT OF RECEIPT

PRIOR EDITIONS MAY BE USED

INSTRUCTIONS FOR SERVICE OF PROCESS BY U.S. MARSHAL

Please type or print legibly, insuring readability of all copies. DO NOT DETACH ANY COPIES. Submit one complete set of this form (USM-285) and one copy of each writ for each individual, company, corporation, etc., to be served or property to be seized or condemned. The applicable fees for such service(s) (T28, USC Sec. 1921 establishes the fees for service of process by the U.S. Marshal) may be required prior to said service.

For service of any process upon an officer or agent of the United States Government, submit a copy of the writ and a set of Form USM-285 for each officer or agent upon whom service is desired. Submit three (3) additional copies of the writs for service upon the Government of the United States. The U.S. Marshal will serve one (1) upon the U.S. Attorney and will forward two (2) to the Attorney General of the United States. (When the applicable box is checked, completion of the final signature block by the U.S. Marshal or his Deputy always certifies service on the U.S. Attorney and the Attorney General, regardless of whether other defendants on the writ were served.) Failure to provide any of the copies will delay service of the writ.

Complete all entries above the double line. Mark all applicable check boxes and use the "Special Instructions" to advise of any information that will assist the U.S. Marshal in expediting service.

If more than one writ and USM-285 is submitted on a single case, the U.S. Marshal will receipt for all of them on the first USM-285. You will receive for your records the last (No. 5) "Acknowledgment of Receipt" copy for all the USM-285 forms you submit. When the writ is served, you will receive the No. 3 Notice of Service copy. This copy will be identical to the return to the Clerk of the Court.

Upon completion of all services (if the Marshals fees were not requested or tendered in advance or if additional fees are indicated), you will receive a "Billing Statement" (copy 4 of USM-285) from the United States Marshal. (NOTE: Copy 4 should be returned, by you, to the U.S. Marshal, together with your payment of the amount owed.

Additional supplies of the USM-285 may be obtained from the Clerk of the U.S. District Court or U.S. Marshal, without cost.